

## **SUBCHAPTER E : ACID RAIN**

### **GENERAL ACID RAIN PERMIT REQUIREMENTS**

#### **§122.410. Standard Acid Rain Requirements.**

Each affected unit shall meet the standard requirements as stated in the acid rain rules regarding permitting, monitoring, sulfur dioxide, nitrogen oxides (as applicable), excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

Adopted August 23, 1993

Effective September 20, 1993

#### **§122.411. Operating Permit Interface.**

(a) Unless specifically noted in this subchapter, all affected sources shall comply with the requirements of this chapter for permit issuance, revision, reopening, and renewal; including any such requirements for application, public participation, review by affected states, and review by the United States Environmental Protection Agency.

(b) The Texas Natural Resource Conservation Commission hereby adopts and incorporates by reference the provisions of 40 Code of Federal Regulations (CFR) 72 as in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. If the provisions or requirements of 40 CFR 72 conflict with or are not included in this chapter, the 40 CFR 72 provisions and requirements shall apply and take precedence.

Adopted August 23, 1993

Effective September 20, 1993

## **ACID RAIN APPLICATION**

### **§122.420. Enforceability of Acid Rain Permit Application.**

A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and all affected units at the affected source governed by the acid rain permit application. The application shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of the acid rain permit.

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### **§122.421. Timely Application.**

(a) Applications for initial Phase II acid rain permits shall be submitted to the Texas Natural Resource Conservation Commission no later than six months after the effective date of the interim federal operating permit program, but no later than by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides pursuant to the Federal Clean Air Act, §407.

(b) The designated representative of affected units that become subject to the acid rain rules after these filing dates shall file applications no later than 12 months after the affected units become subject to those rules, unless otherwise specified in the acid rain rules.

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### **§122.422. Complete Application.**

The Texas Natural Resource Conservation Commission will submit a notice of application completeness to the United States Environmental Protection Agency within ten working days following a determination that an acid rain permit application is complete.

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### **§122.425. Acid Rain Compliance Plan.**

In addition to the requirements under Subchapter B of this chapter (relating to Permit Requirements), the acid rain compliance plan shall include documentation that the affected source will meet the applicable acid rain emissions limitations and acid rain emissions reduction requirements.

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### **§122.427. United States Environmental Protection Agency (EPA) Review.**

The Texas Natural Resource Conservation Commission shall submit a copy of the acid rain portion of the draft permit to the EPA and all other relevant portions of the draft permit that may affect the acid rain portion of the draft permit.

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## **ACID RAIN PERMIT ISSUANCE, REVISIONS, AND REOPENINGS**

### **§122.430. Acid Rain Permit Conditions.**

(a) Emissions from the affected units which are subject to the requirements of the acid rain rules shall not exceed any allowances that the affected unit lawfully holds under the acid rain provisions of the Federal Clean Air Act or the acid rain rules.

(1) No revision to the federal operating permit shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(2) There is no limit placed on the number of allowances held by the affected unit. The affected unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(3) Any such allowance shall be accounted for according to the procedures established in the acid rain rules.

Adopted August 23, 1993

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### **§122.432. Acid Rain Permit Issuance.**

(a) In addition to the permit issuance requirements under Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals), for acid rain permits, the applicant shall submit to the United States Environmental Protection Agency a certificate of representation for the designated representative of the affected source in accordance with the acid rain rules.

(b) Each acid rain permit shall have a fixed term of five years commencing on its effective date. Each acid rain permit issued on or before December 31, 1997 in accordance with subsection (c) of this section shall take effect by the later of January 1, 2000 or, where the permit governs a new unit or upgraded unit, the deadline for monitor certification under 40 Code of Federal Regulations 75.

(c) The Texas Natural Resource Conservation Commission (Commission) or its designee shall issue or deny an acid rain permit on or before December 31, 1997 (if the operating permit program has received full or interim approval by July 1, 1996) to each affected source provided that the designated representative of the affected source submitted a timely and complete acid rain permit application and meets the requirements of the acid rain rules and of this chapter. Otherwise, the Commission or its designee shall issue or deny an acid rain permit within 18 months of receiving a complete acid rain permit application.

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**§122.434. Acid Rain Permit Shield.**

Each affected unit operated in accordance with the acid rain permit that governs the affected unit, and that was issued in compliance with the acid rain provisions of the Federal Clean Air Act and the acid rain rules shall be deemed to be operating in compliance with the acid rain requirements, except as provided in 40 Code of Federal Regulations 72.9(g)(6).

Adopted August 23, 1993

Effective September 20, 1993

**§122.435. Acid Rain Permit Revisions.**

(a) The provisions of this subchapter supplement Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals). Where the provisions of this subchapter conflict with Subchapter C of this chapter, the provisions of 40 Code of Federal Regulations 72 shall supersede the operating permit revision procedures with regard to revision of any acid rain permit provision.

(b) No acid rain permit revision shall affect the term of the acid rain permit to be revised. No acid rain permit revision shall excuse any violation of an acid rain requirement that occurred prior to the effective date of the revision.

(c) The existing terms and conditions of the acid rain permit shall apply while any acid rain permit revision is pending.

(d) The standard requirements contained in the acid rain rules shall not be modified or voided by an acid rain permit revision.

(e) Changes that are prohibited by the acid rain permit or changes which are not addressed by the acid rain permit shall not be made by the permittee without first revising the acid rain permit, if such changes are subject to any requirements under the acid rain rules.

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Effective September 20, 1993

**§122.437. Acid Rain Permit Revision Procedures.**

(a) Permit modifications. The following acid rain permit revisions are permit modifications and shall follow the permit issuance procedures of this chapter and Subpart G of 40 Code of Federal Regulations (CFR) 72:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the United States Environmental Protection Agency (EPA);

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period; and

(3) determinations concerning failed repowering projects.

(b) Fast track modifications. Notwithstanding subsection (a) of this section, at the option of the designated representative, permit revisions which meet the criteria in 40 CFR 72 for fast track modifications may follow the procedural requirements for fast track modifications listed in 40 CFR 72.

(c) Administrative permit amendments. The following acid rain permit revisions are administrative permit amendments and shall follow the administrative permit amendment procedures of this regulation, except that the Texas Natural Resource Conservation Commission shall submit the revised portion of the permit to the EPA within ten working days after the date of final action on the request for an administrative amendment:

(1) activation of a compliance option conditionally approved by the TNRCC; provided that all requirements for activation under the acid rain rules are met;

(2) changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted;

(3) changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days of the change;

(4) termination of a compliance option in the permit; provided that all requirements for termination under the acid rain rules shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

(5) changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with the acid rain rules;

(6) the addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of the Federal Clean Air Act, §407 are met; and

(7) incorporation of changes that the EPA has determined to be similar to those in paragraphs (1)-(6) of this subsection.

(d) The following permit revisions shall be deemed to amend automatically and become a part of the affected unit's acid rain permit by operation of law without any further review:

(1) upon recordation by the EPA, all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and

(2) incorporation of an offset plan that has been approved by the EPA.

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**§122.438. Permit Reopenings.**

No later than January 1, 1999, the Texas Natural Resource Conservation Commission shall reopen the acid rain permit to add the acid rain nitrogen oxides requirements as applicable, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides. Such reopening shall not affect the term of the acid rain portion of an operating permit.

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## **ACID RAIN APPEALS**

### **§122.440. Acid Rain Appeals Procedure.**

(a) Appeals of the acid rain portion of an operating permit issued by the Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee that do not challenge or involve decisions or actions of the United States Environmental Protection Agency (EPA) under the acid rain provisions of the Act and the acid rain rules shall be conducted according to procedures of the Texas Health and Safety Code, §382.032.

(b) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the EPA shall follow the procedures specified 40 Code of Federal Regulations (CFR) 78 and the Federal Clean Air Act, §307. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(c) The TNRCC shall serve written notice on the EPA of any judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.

(d) The Administrator may intervene as a matter of right in any permit appeal involving an acid rain permit provision or denial of an acid rain permit.

(e) The TNRCC shall serve written notice on the EPA of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause.

(f) A failure of the Commission or its designee to issue an acid rain permit in accordance with the acid rain rules shall be grounds for filing an appeal.

(g) No appeal concerning an acid rain requirement shall result in a stay of any provision of the acid rain permit for which a stay is barred under 40 CFR 78.

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